

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

In re:

Case No. 3:13-bk-2037-PMG

KRC Property, Ltd.,

Debtor.

Chapter 11

**ORDER ON EMERGENCY MOTION FOR ORDER DIRECTING DISBURSING AGENT
TO DISTRIBUTE NET PROCEEDS TO FARM CREDIT OF FLORIDA, ACA**

THIS CASE came before the Court for hearing to consider the Emergency Motion for Order Directing Disbursing Agent to Distribute Net Proceeds to Farm Credit of Florida, ACA (Farm Credit). (Doc. 308).

Farm Credit is a creditor of Thomas and Tina Rhoden (the Rhodens). The Rhodens are limited partners of the Debtor, KRC Property, Ltd., and are entitled to receive a distribution under the Debtor's confirmed Plan.

According to Farm Credit's Motion, the Rhodens assigned the distribution to Farm Credit by virtue of a prepetition Assignment of Sales Proceeds, and the Plan's Disbursing Agent therefore should pay the distribution to Farm Credit instead of to the Rhodens. In response, the Rhodens contend that the Assignment was subject to further negotiations, and does not constitute an effective transfer of the distribution to Farm Credit.

Courts generally agree that Bankruptcy Court jurisdiction “shrinks” after confirmation. In this case, the Court lacks jurisdiction to determine the matter raised by the Motion, because the issue involves a state law dispute between an insider and a third party, because the issue does not require the Court to interpret the Chapter 11 Plan or any Court orders, and because the issue does not affect the amount received by the Debtor’s other creditors under the Plan.

Background

The Debtor filed a petition under Chapter 11 of the Bankruptcy Code on April 4, 2013. The Rhodens are limited partners of the Debtor.

The Debtor’s primary asset consisted of approximately 3,600 acres of real property located in Baker County, Florida (the Property).

On October 22, 2013, the Court entered an Order Confirming Debtor’s Chapter 11 Plan of Reorganization. (Doc. 154). The Plan is a liquidating plan. (Doc. 154, p. 5). Generally, the confirmed Plan provided for the Debtor to sell all of its assets, and for the sale proceeds to be distributed to the holders of allowed claims by a Disbursing Agent.

On July 8, 2014, the Court entered an Order Pursuant to Sections 105 and 363 of the Bankruptcy Code and Debtor’s Confirmed Chapter 11 Plan, Approving (A) Purchase and Sale Agreement, and (B) Sale of Reorganized Debtor’s Real Property at Private Sale. (Doc. 294). In accordance with the Order, the Debtor sold the Property on July 24, 2014, for the sale price of \$4,550,000.00. (Doc. 299).

The Plan was funded from the sale proceeds, and the Rhodens are entitled to receive a distribution under the Plan.

In its Motion for Order Directing Disbursing Agent to Distribute Net Proceeds, Farm Credit alleges (1) that it extended credit to the Rhodens in 2007, and (2) that the Rhodens signed an

Assignment of Sales Proceeds on July 11, 2012, to provide additional security for the credit. The Assignment provides, in part:

The Assignor does hereby grant, transfer and assign to the Assignee its entire interest in and to all net sales proceeds due and to become due from the sale of the large acreage parcel (approximately 3,600 acres) owned by KRC Property, Inc. and/or KRC Property, LTD in favor of Farm Credit of Florida, ACA, as agent/nominee to the Association.

(Doc. 308, Exhibit B). Based on the Assignment, Farm Credit asserts that it is entitled to be paid the Rhoden's entire distribution under the confirmed Plan directly from the Disbursing Agent. (Doc. 308, ¶ 11).

In response, the Rhodens contend that the Assignment does not constitute an effective transfer of their interest in the sale proceeds, because the Assignment also provides that:

The amount of Borrower's net proceeds to be applied to the Farm Credit outstanding indebtedness will be negotiated at the time of sale. This Assignment becoming effective as to future sales affecting said premises automatically upon execution and delivery thereof.

(Doc. 308, Exhibit B). Based on this provision, the Rhodens assert that the Assignment did not constitute an effective transfer of their interest in the sale proceeds, because it was subject to a condition precedent in the form of further negotiations. Consequently, the Rhodens dispute Farm Credit's claim to their distribution under the confirmed Plan.

Discussion

This Court lacks subject matter jurisdiction to determine the dispute raised by Farm Credit's Motion for Order Directing Disbursing Agent to Distribute Net Proceeds.

Section 1334(b) of title 28 provides that district courts shall have "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title

11.” 28 U.S.C. §1334(b). The jurisdiction provided by §1334(b) is referred to the Bankruptcy Court pursuant to 28 U.S.C. §157(a).

“The test for determining whether a civil proceeding is ‘related-to’ bankruptcy is whether the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” Florida Development Associates Ltd. v. Knezevich and Associates, Inc., 2009 WL 393870, at 3 (Bankr. S.D. Fla.)(citing Pacor, Inc. v. Higgins, 743 F.2d 984, 994 (3d Cir. 1984)).

“Most Courts agree that once confirmation occurs, the bankruptcy court’s jurisdiction [under Section 1334] shrinks.” In re New England National, LLC, 2013 WL 812380, at 20 (Bankr. D. Conn.)(quoting In re Park Avenue Radiologists, P.C., 450 B.R. 461, 467 (Bankr. S.D.N.Y. 2011)). Although Courts have struggled to identify the boundaries of post-confirmation jurisdiction, “most agree that ‘related to’ jurisdiction shrinks after confirmation.” In re Equipment Finders, Inc. of Tennessee, 473 B.R. 720, 731-32 (Bankr. M.D. Tenn. 2012).

As part of the struggle to outline post-confirmation jurisdiction, some Courts have applied a “close nexus” test, meaning that the inquiry is “whether there is a close nexus to the bankruptcy plan or proceeding sufficient to uphold bankruptcy court jurisdiction over the matter.” In re Resorts International, Inc., 372 F.3d 154, 166-67 (3d Cir. 2004)(cited in Florida Development Associates, 2009 WL 393870, at 4). Other Courts have applied varying standards to determine post-confirmation jurisdiction, such as a “significant effect” test. Whyte v. Pricewaterhousecoopers LLP, 2011 WL 1104527, at 2 (N.D. Okla.).

Regardless of which test is applied, the analysis generally involves the Court’s consideration of a number of factors. The determination of post-confirmation related-to jurisdiction “is a fact sensitive endeavor” in which the Court may evaluate a series of non-exclusive factors. In re New England

National, LLC, 2013 WL 812380, at 21-22 (Bankr. D. Conn.); In re Equipment Finders, Inc., 473 B.R. at 733.

In this case, the Court finds that it lacks subject matter jurisdiction to determine the dispute raised by Farm Credit's Motion, based on the following factors:

1. The issue involves a state law dispute between an insider and a third party.

The parties appear to agree that the Disbursing Agent has calculated the distribution that is payable under the confirmed Plan on account of the Rhoden's interest as equity holders in this case. The sole question is whether the distribution should be paid to the Rhodens or to Farm Credit.

According to the parties, the answer to the question depends on the appropriate interpretation of the Assignment of Sales Proceeds that was signed by the Rhodens and Farm Credit in 2012. The Rhodens are equity holders of the Debtor, and Farm Credit is a creditor of the Rhodens. The Debtor is not a party to the Assignment, and takes no position on the merits of the dispute. Consequently, the issue involves a dispute between an insider of the Debtor and a third party.

Under the Rhoden's interpretation of the Assignment, the transfer of the sale proceeds to Farm Credit was subject to a condition precedent, because the Assignment provides that the amount of the proceeds payable to Farm Credit "will be negotiated at the time of sale." Under Farm Credit's interpretation of the Assignment, on the other hand, the transfer was absolute, because the Assignment provides that the Rhodens transferred their "entire interest" in the sale proceeds to Farm Credit.

At the hearing on Farm Credit's Motion, the parties agreed that Florida law controls the resolution of the dispute. See, for example, Mitchell v. DiMare, 936 So.2d 1178 (Fla. 5th DCA 2006)(a case decided under Florida law, which involved a dispute over whether a brokerage contract contained inconsistent provisions and a condition precedent).

In this case, the issue is not “related to” the Debtor’s bankruptcy because it involves a state law dispute between an insider and a third party. The Rhoden’s status as limited partners of the Debtor does not control the jurisdictional analysis. “It is ‘the relation of dispute to estate, and not of party to estate, that establishes jurisdiction.’” In re Pinewood Buffet & Grill, Inc., 2013 WL 6899079, at 8 (Bankr. N.D. Ill.)(quoting In re Xonics, Inc., 813 F.2d 127, 131 (7th Cir. 1987)). The state law dispute arising under the Assignment of Sales Proceeds is not related to the bankruptcy estate.

2. The issue does not require the Court to interpret the Chapter 11 Plan or any Court orders.

The dispute does not implicate any provision of the Bankruptcy Code. Neither Farm Credit nor the Rhodens have relied on any section of the Code to support their respective positions.

Additionally, the resolution of the dispute does not require the Court to interpret any provision of the confirmed Plan. The Plan is a liquidating Plan, and the liquidation of the Debtor’s assets is concluded. (Doc. 154).

Under the confirmed Plan, the Disbursing Agent is to make all distributions required under the Plan. (Plan, Article 6). The Disbursing Agent has completed his duty to determine the distributions allowed to equity holders, and no mechanism exists in the Plan for resolving a dispute between an equity holder and a creditor of the equity holder. See In re Equipment Finders, Inc., 473 B.R. at 733(A factor in determining post-confirmation jurisdiction is whether the confirmed plan contains any provision for resolving the type of dispute presented.).

Finally, the dispute does not require the Court to interpret any Order previously entered in the bankruptcy case. “A bankruptcy court necessarily retains the power to enforce its own orders and its own injunctions.” Bombart v. Family Center at Sunrise, LLC, 2014 WL 5017996, at 2 (S.D.Fla.). In

this case, however, the dispute centers solely on Farm Credit's claim to the Rhoden's distribution. Neither the confirmation Order nor any other Order entered in the case addresses a third party's claim to a creditor's distribution, or directs the Disbursing Agent to make specific payments.

The issue is not "related to" the bankruptcy case because it does not require the Court to interpret the Debtor's Chapter 11 Plan or any Court orders previously entered in the case. In re New England National, LLC, 2013 WL 812380, at 22.

3. The issue does not affect the amount received by the Debtor's other creditors under the Plan.

As indicated above, the confirmed Plan is a liquidating plan, and distributions to creditors and equity holders are made from a Plan Fund. The term "Plan Fund" is defined as "the Cash deposited into an escrow account established from the Sale Proceeds for the purposes of providing distributions to holders of Allowed Claims." (Doc. 154, Exhibit A, Plan of Reorganization, p. 6).

The Debtor's assets have been liquidated, and the allowed claims against the estate have been determined.

For purposes of Farm Credit's Motion, the dispute involves whether a distribution should be paid to the Rhodens, or whether the distribution should be paid to Farm Credit. The amount of the distribution by the Disbursing Agent is not at issue and will not change, regardless of the payee. Consequently, the dispute will not affect the rights of any other creditor under the Debtor's confirmed Plan. In re Equipment Finders, Inc., 473 B.R. at 734.

The issue is not "related to" the bankruptcy case, because it does not affect the amount received by the Debtor's other creditors under the Plan. A dispute is not related to a bankruptcy case if it does not "affect the amount of property available for distribution or the allocation of property among creditors."

In re Pinewood Buffet & Grill, Inc., 2013 WL 6899079, at 8(quoted In re Xonics, Inc. 813 F.2d at 131).

Conclusion

Farm Credit filed a Motion for Order Directing Disbursing Agent to Distribute Net Proceeds to Farm Credit of Florida, ACA.

Farm Credit is a creditor of the Rhodens. The Rhodens are limited partners of the Debtor, and are entitled to receive a distribution under the Debtor's confirmed Plan.

According to Farm Credit, the Rhodens assigned the distribution to Farm Credit by virtue of a prepetition Assignment of Sales Proceeds, and the Plan's Disbursing Agent therefore should pay the distribution to Farm Credit instead of to the Rhodens. In response, the Rhodens contend that the Assignment was subject to further negotiations, and does not constitute an effective transfer of the distribution to Farm Credit.

Courts generally agree that Bankruptcy Court jurisdiction "shrinks" after confirmation. In this case, the Court lacks jurisdiction to determine the matter raised by Farm Credit's Motion, (1) because the issue involves a state law dispute between an insider and a third party, (2) because the issue does not require the Court to interpret the Chapter 11 Plan or any Court orders, and (3) because the issue does not affect the amount received by the Debtor's other creditors under the Plan.

Accordingly:

IT IS ORDERED that the Emergency Motion for Order Directing Disbursing Agent to Distribute Net Proceeds to Farm Credit of Florida, ACA, is denied, without prejudice to the right of Farm Credit

of Florida, ACA to assert its claim in a court of appropriate jurisdiction.

DATED this 26 day of November, 2014.

BY THE COURT

Paul M. Glenn
PAUL M. GLENN
United States Bankruptcy Judge